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In The
Supreme Court of the United States

JOHN GREEN
Petitioner
v.

WILLIAM GIANOS, ALBERT RYLAK
JEFFREY MARTIN, LAW FIRM OF
RYLAK & GIANOS AND STEPHEN RUBIN
Respondents

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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INTRODUCTION

This reply brief is to address some new points raised by the Respondents, and correct errors in their Counter-Statement of Case.

I. ERRORS IN THE DEFENDANT'S COUNTER STATEMENT OF CASE.

The Respondents assert that before 2001, the New Jersey Court Rules did not address whether prosecutors could charge a fee for providing discovery in municipal cases, this is some what misleading. This is not what State v Green 327 N.J. Super 334 (App. Div 2000) held. The New Jersey Supreme Court rules committee interpreted State v Green to say,

New Jersey Court Rules, Rule 7:7-7

> "As to the "fee," the court rules governing discovery in the municipal court, either those in existence of the time of the infraction or currently, do not authorize a municipal prosecutor to charge what the prosecutor apparently views as an administrative fee to cover his overhead." State v Green 327 N. J. Super, 334, * 340, 743 A.2d 357, **360.

So this, "administrative fee" is not authorize, Green refused to pay an unauthorized fee and he was denied discovery. And certainly the rules don't allow for a prosecutor to demand funds for his own personal benefit.

Then they try and mislead this court by implying that the $25.00 fee was set because of the administrative cost associated with compiling, locating and copying the, "voluminous" discovery Green asked for. The $25.00 flat fee was established before Green every came in contract with their prosecutor, see respondents Brief, Page 12, so this fee had nothing to do with what Green asked for. Green was not even allowed to make copies of the items unless he gave up his right to sue for violations of his constitutional rights

in a private civil action (DA 6A-7A and State v Green).

Now the assertion that the Petitioner refused to pay for discovery is totally untrue, what Green refused to do was pay the copying cost *plus* give up another constitution right, the right to sue, in this country we don't have to trade one constitution right to gain another (DA 6A-7A).

Judge Martin coupled the Court would making photocopies of the items that the prosecutor had in Court on March 12, 1997, and Green paying copying cost (Which Green agreed to pay) with the signing of a release not to file a private suit against Mr. Gianos and his law firm, Green refused to give up a constitution right to sue, see Stave v Green.

Now as the Court found in State v Green, Green did not received discovery on March 12, 1997, or any other time.

Lastly the Respondents assert that Green did not challenging the constitutional basic of the lower Courts holdings. It's unclear what constitutional issues the respondents are talking about, Title 42 is not a constitution clause, it a statue. Although discovery itself is not a constitutional right, it's a due process right which Green certainly did address (Although Green did talk about Brady material he did forget to give the cite number for that case). And the defendants have not presented any evidence that prosecutors have stop charging monies for discovery. The same rules were in effect then, as now, and they still violated them. And this issue is bigger then New Jersey, the Third Circuit controls three states, so when the court turns its head when public officials use their office for private enrichment is a matter of great public importance. Now the respondents may not think it's important how pro se litigants are dealt with by the federal courts, but this Court has always felt that it's an important issue.

II. THE RESPONDENTS VIOLATED CLEARLY ESTABLISHED LAW.

The Respondents argue that the Third Circuit chose not to

discuss the qualified immunity issue because it was an unnecessary step in its analysis. The Respondents just gave another reason why this Court should grant the petition. In this age of the Internet, where unpublished cases are just a mouse click away the role of this Court is even more important. The district court held that the subjective element is reason to grant summary judgment. Green on appeal argued it wasn't. By the Third Circuit remaining silent and not correcting the district court we have the Respondents, the ones that instruct the public on what their legal rights are, and attorneys that use the internet to research unpublished cases, believing that that the Third Circuit has returned to pre Harlow v Fitzgerald 457 US 800 (1982) days.

Qualified immunity turns on the "objective legal reasonableness" of the action, assessed in light of the legal rules that were "clearly established" at the time the action was taken, see ANDERSON v. CREIGHTON, 483 U.S. 635 (1987). Although this Petitioner clearly addressed the issue of subjective element of the defendant's state of mind, they state of mind is irrelevant to qualified immunity.

I'm not sure what law was not clearly established. Court rules are not laws; they are put in replace by the court to insure a fair trial is had by all parties. Although court rules are not constitutional rights per se, violation of them can, and did result in a constitutional violation of Green's rights. The right to discovery is clearly established when the discovery the that is requested is material to the guilt or punishment, Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). And the Court in State v Green found that case law held that he was entitle to discovery, and he was entitled to more discovery then the prosecutors felt they had to give. Now during the dispute in the municipal court, Green was gave the Respondents the same case law that the court in State v Green cited, so they can't now claim that they didn't know the law, they just chose to ignore it. It was also clearly established common law that a public official can't use their office for

personal financial gains at the expenses of the constitution right of a citizen. This was one of the main issues Green cited in his opposition to summary judgment, but the District Court ignored this issue, so Green cited abuse of discretion in his section, "Scope of review." in his brief in support of Appeal.

Green argued that this was extortion and Green also argued to the District and Third Circuit Court that this also can be view as soliciting a bribe form the prosecutors to provide discovery. Green knew that a public official that used their office for personal financial gains was illegal and if Green this pay this bribe, he would be just as criminally guilty as the respondents on this issue.

Both the Appellate Court in State v Green and the New Jersey Supreme Court Rules Committee held that it was clearly established that at the time of this dispute that the Court rules did not allow charging this type of fee for discovery. And State v Green held in dicta that not only was Green's rights to discovery violated, but the prosecutors demands was unauthorized by court rules and clearly ***unreasonable***. The District Court gave the opinion of State v Green and New Jersey Supreme Court Rules Committee the very little weigh.

Although the Respondents complain about the number of items that Green asked for in discovery, they have not disputed the fact that the items Green asked for were items that New Jersey Case law said was relevant to a defense in the type of offence Green was charged with.

It should also be noted that in all the filing by the Respondents in the federal case and also in the municipal case that they have yet to cite one statue, rule or case law that supports their view that they could charge this fee and use it for their personal financial gain.

III. PETITIONERS FIRST ARGUMENT IS NOT MOOT

The Respondent claim that the Petitioner's first argument is

without merit because the New Jersey Court rule now says that they may not charge an administrative the problem is now moot. This argument is problematic for the respondents. The first problem is that even the District court didn't believe that State v Green corrected the violation, Petitioners Appendix 19A; Judge Thompson;

> "However, the Court strongly suggests that municipality revisit the appropriateness of requiring a flat twenty – five dollar fee, as opposed to per page fee or no fee at all."

Now Judge Thompson erred in believing that this fee was a municipal fee, there was never any evidence that the municipality was even aware of this fee, it was clearly a fee that a private law firm wanted, and the District Court believed that this was still going on.

Next they say that in the comments to 2002 and 2003 of the New Jersey Court rules it expressly prohibit municipal prosecutors from charging any fee they wish, so they admit now that they were prohibited form doing the exact thing they did, because the first line on the comment in the New Jersey rules tells us that this was in effect at the time of the offence and trial of the Petitioner.

The Respondents argue that they did not demand the $ 25.00 fee to further a personal interest, but rather to cover the anticipated administrative expenses borne by their private law firm in doing the job as prosecutors. The Law firm of Rylak & Gianos is a partnership and Mr. Gianos is a partner, see Gianos Affidavit PA 26A. Para 1 They make no claim that the Court, the State, or the municipality has an interest in this law firm, so it's their personal interest any way you slice it. They presented no evidence that they would lose money in providing discovery, nor how often they are asked to provide discovery in municipal cases. The claim that they borne an additional financial burden of having to pay local police departments for their copying costs is without merit. They refused to allow Green to copy

the items that they already had in court of March 12, 1997, which they admitted they would be using in court against Green, so they needed them anyway. This is not a case of municipal prosecutors demanding a fee to paid to the municipality, the police, the court or the state to recover the cost of copying the items from the petitioner, the petitioner was clearly willing to pay that(DA 6A-7A). This is a case of attempted thief by extortion and they used their official position under color of law to do it.

They knew, and in fact it is their duty to know that reviewing and providing discovery is the job of the municipal prosecutor. And if they didn't know this they still have no excuse because Green provided the case law to them during the time he was seeking discovery.

Mr. Gianos has been an attorney for twenty years, see PA 27A Para 5. Mr. Gianos is the municipal prosecutor for four other municipalities, see PA 27A Para 6. No one twisted their arms to apply for and accept the jobs as municipal prosecutors, they did it of their own accord, knowing what the law says the responsible are, and knowing what they would get paid. If they negotiated a fee with the municipal that would not cover the cost of fulfilling their responsible as municipal prosecutors, then they set the fees too low and they lose money, Just like and other bidder on any other municipal contract. That does not give them the authority to seek financial rewards by withholding information that a defendant needs to prove he is not guilty. This is wrong, this is an abuse of their office, and this is what 42 Sec 1982 is meant for.

They wrongly assert that although at the time the New Jersey Court Rules did not expressly authorize charging a fee for discovery, it did not expressly prohibit this charge either, that's wrong according to the New Jersey court rules, but lets assume that they did not expressly prohibit the fee. When the President is sworn in I don't hear them ask him, oh by the way you know that you can't take bribes or extort

money from people. It's common law that public official can't use their office for personal financial rewards, even if being in that office personally cost them more then what they are paid. Common law extortion is when a public official makes a demand to be paid a fee that is not authorized, see Rollin M. Perkins & Ronald N. Boyce, Criminal Law 538 (3d ed. 1982).

This issue is not moot, this courts ruling would not affect any court in any municipal in any State from doing what they did to Green, the ruling of the New Jersey Appellate Court can't accomplish this in the other 49 states, the Third Circuits ruling affects three states.

IV.The Mathews v Eldridge Standard.

The district court cited Mathews v Eldridge 424 US 319 (1976) to support its view that all Green was entitled was to be heard a "meaningful manner (PA 19A)." and the Third Circuit cited that case also.

In Mathews v Eldridge is a test to evaluate if the procedure was constitutionally sufficient, both the Respondents and this Petitioner agree that neither the District nor the Third Circuit court did this test. And how could they? This administrative fee was not a government statue or rule; this was a procedure that the respondents made up for their personal financial gains. There was no the government's interest here; this was the personal interest of the prosecutors. How could there be a hearing in a meaningful manner when the prosecutor had a personal interest in the enforcement of this fee, and we can see from their argument that the discovery given was not based of the defendant's constitutional rights, but rather the cost to their personal law firm.

Although Green fully argued to the Third Circuit that Mathews v Eldridge is really not at the same magnitude as State v Green, Green was a case when he could have been put in jail, Mathews v Eldridge was just a civil administrative case, the defendants chose not to

address that in their Brief in Opposition to the Third Circuit, but now they want to argued this point. Green agrees that the New Jersey case law says that traffic violates are, quasi-criminal, but the defendants protections are the same as someone charged with a crime. The New Jersey Supreme Court held in STATE V. WIDMAIER 157 N.J. 475, 724 A.2d 241 (S. Ct. 1999)(talking of Traffic violations)

> "see also State v. Francis, 67 N.J. Super. 377, 381, 170 A.2d 476 (App. Div. 1961) (holding that defendants charged with quasi-criminal offenses "are entitled to the same protections as are normally accorded one accused of a criminal offense")."

The discovery rule that was to be used in this case was New Jersey Court rule R. 3:13-2 and R. 3:13-3 as outlined by State v Green. This is the rule for criminal cases, and this Court held in MEDINA v. CALIFORNIA, 505 U.S. 437 (1992) that Mathews v Eldridge was not the proper test to evaluate if the procedure was constitutionally sufficient in these type of cases.

V. PETITIONER WAS ENTITLED TO THE RIGHT TO HAVE PROSECUTORS WITHOUT A FINANCIAL INTEREST IN DISCOVERY.

The Petitioner cited many cases wish held that a defendants was entitled to a prosecutor without conflicting loyalties, the Respondents address only one of those cases, Marshall v. Jerrico 446 US 238 (1980). But this case said;

> "A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some [446 U.S. 238, 250] contexts raise serious constitutional questions."

All one has to do is read their Brief to see one of their main concern was getting personal reimbursement for the

expense of prosecuting Green. They argued in court this administrative fee, an issue that they had a personal financial interest in. And they did stand to profit personally in the issue of this discovery fee because they were already being paid to do the job of a prosecutor, and they wanted additional money from Green. So the decision to enforce this fee was purely based on private personal interest, and not law. Also the amount of discovery they would give Green was based what is would could their personal law firm, not what Green was entitled to.

Now it's untrue that there was not even an appearance of impropriety, it's undisputed that Mr. Gianos was removed from this case before of the conflict of interest here, it was only when the new prosecutor would not prosecute Green that the matter was returned to Mr. Gianos partner, Mr. Rylak to prosecute.

Was Judge Martin a disinterested party in this case, only discovery will show. Well Green had shown that the prosecutors and the Judge had ex parte meeting on this case, discussing parts of the case. We know that on, March 12, 1997 Judge Martin granted Green items in discovery, and told him he would get them that day, but took that away from Green unless Green gave up his rights in file a civil case. We know that Green presented results from respected law journal in New Jersey, on a study on the problem of municipal courts in used as "cash cow". The New Jersey Law Journal, on Feb. 28, 1994, said in this study, "municipal governments regard local courts as cash cows." Green also presented evidence of a municipal Judge getting fired for not bringing in enough fine money. So there are real problems in New Jersey municipal court not being used for justice, but to raise money for towns. Discovery should go on; there are many questions here, when Judge Martin disqualified Mr. Gianos and replaced him with a new prosecutor (not Mr. Rylak) why didn't he prosecute this case?

Could it be, as Green alleges, that there was no evidence that Green committed any offence, and there was no reason to prosecute?

VI. Failure to instruct

The Respondents argue that Green submitted no evidence that the Third Circuit has ruled pro se litigants should be given special guidance by the district court on summary judgment procedure, that's correct, and it should be clear that they don't consider a pro se's confusion on summary judgment matters a reason to return the matter to the district court, other circuits have. The Respondent removed all doubt that the petitioner was confused, they included the petitioner's letter to the District Court's Judge showing that the petitioner did not have a total understanding of Federal Civil Rule 56(Respondent's Appendix 8A). It was clearly the petitioners understand that CELOTEX CORP. v. CATRETT, 477 U.S. 317 (1986) meant that they were bears the initial responsible to identify those clauses of action which it believes demonstrate the absence of a genuine issue of material fact.

Green believe the evidence shows that these prosecutors used their position for a personal gain, but even if there was no constitutional violation, and this was just a matter of violation of a State Court rule, then summary judgment is still improper. As Green has shown with New Jersey case law holds that he is entitle to recover his cost caused by the violation of the discovery rules, and State v Green already commented on the violation. Green did ask for these cost in his complaint.

CONCLUSION

I ask this Honorable Court to grant this petition.

Respectfully submitted

JOHN GREEN DATED: OCTOBER 24, 2002